

STATE OF MICHIGAN  
COURT OF APPEALS

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ADAMS POURED WALLS, INC., d/b/a ADAMS  
BUILDING CONTRACTORS,

Plaintiff-Appellant,

v

WILLIAM RAYMER, W. B. RAYMER, P.C., and  
RAYMER & CARROLL, P.C.,

Defendants-Appellees.

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UNPUBLISHED  
November 14, 2006

No. 270338  
Jackson Circuit Court  
LC No. 04-004689-NM

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff allegedly lost its right to enforce a construction lien against property owned by Calderone Farms Golf Venture as a result of defendants' negligence and sued defendants for legal malpractice. Defendants argued that their negligence was not a proximate cause of any injury to plaintiff because a purchase-money mortgage held by Bank One took priority over plaintiff's construction lien and, because the value of the property was less than the debt secured by the mortgage, there was nothing to satisfy plaintiff's lien. The trial court agreed and granted defendants' motion.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Statutory interpretation is a question of law which is reviewed de novo on appeal. *In re MCI Telecommunications Complaint*, 460 Mich 396, 413; 596 NW2d 164 (1999).

"A 'purchase money mortgage' is a mortgage given to a vendor of the real estate or to a third party lender to the extent that the proceeds of the loan are used to: (1) acquire title to the real estate; or (2) construct improvements on the real estate if the mortgage is given as part of the same transaction in which title is acquired." Restatement Property, 3d, Mortgages, § 7.2, p 458. While the Supreme Court in *Fecteau v Fries*, 253 Mich 51; 234 NW 113 (1931), gave priority to a purchase money mortgage over a previously-recorded lien in contravention of MCL 565.25(4), the Supreme Court has since expressed that *Fecteau* should be limited to its facts. *Graves v*

*American Acceptance Mortgage Corp*, 467 Mich 308, 311-313; 652 NW2d 221 (2002), vacated 467 Mich 1231 (2003). Nevertheless, where construction liens are concerned, priority is determined with reference to §§ 119(3) and (4) of the Construction Lien Act (CLA), MCL 570.1119. See *Stocker v Tri-Mount/Bay Harbor Bldg Co, Inc*, 268 Mich App 194; 706 NW2d 878 (2005).

Section 119(3) gives a construction lien “priority over all other interests, liens, or encumbrances . . . when the other interests, liens, or encumbrances are recorded subsequent to the first actual physical improvement.” There is no broader classification than the word “all,” which, given its ordinary and natural meaning, leaves no room for exceptions. *Skotak v Vic Tanny Int’l, Inc*, 203 Mich App 616, 619; 513 NW2d 428 (1994). Thus, given the plain and unambiguous language of the statute, any mortgage, including a purchase-money mortgage, is subordinate to a construction lien if the mortgage is recorded after the first actual physical improvement has been made to the property. If, on the other hand, the mortgage is recorded before the first actual physical improvement has been made to the property, the mortgage takes priority over a construction lien, at least with respect to funds advanced before the first actual physical improvement was made. MCL 570.1119(4); *Stocker, supra* at 197, 200. Therefore, regardless of whether the bank’s mortgage was a purchase-money mortgage, its priority relative to plaintiff’s construction lien is to be determined by § 119 of the CLA.

Accordingly, we reverse the trial court’s ruling that a purchase-money mortgage takes precedence over a construction lien regardless of anything to the contrary in § 119 of the CLA. Because the court never determined when the first actual physical improvement was made to the property, we remand for a determination of priority under § 119 of the CLA.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood  
/s/ Christopher M. Murray  
/s/ Pat M. Donofrio